

5
No. 87-5565

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIO, JR.
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1987

CHERLYN CLARK,
Petitioner,

v.

6 GENE JETER,
Respondent.

On Writ of Certiorari to the
Superior Court of Pennsylvania

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED SEPTEMBER 24, 1987
CERTIORARI GRANTED JANUARY 11, 1988

8907

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LIST OF RELEVANT DOCKET ENTRIES

Court of Common Pleas of Allegheny County, Pennsylvania

- September 22, 1983—Complaint for support made and filed
- October 3, 1983—Order of Court for blood tests on October 17, 1983 filed
- January 25, 1984—Order of Court scheduling pre-trial conference
- February 17, 1984—Order of Court directing Plaintiff to respond to Defendant's Motion to Dismiss Complaint within 20 days
- March 7, 1984—Answer to Defendant's Motion to Dismiss filed by Plaintiff along with Motion for Judgment in favor of Plaintiff
- April 10—Order scheduling hearing for May 8, 1985
- July 9, 1985—Opinion filed
- August 5, 1985—Notice of Appeal to Superior Court filed

Superior Court of Pennsylvania

- April 11, 1986—Appellant's Application for Permission to File an Application for Remand
- April 15, 1986—Appellee's Answer to Application for Permission to File Application for Remand
- October 23, 1986—Application for Permission to File an Application for Remand denied. Decision and order affirming decision of Allegheny County Court of Common Pleas
- November 6, 1986—Motion for Reargument. Appellant's Proof of Service of Notice to the Attorney General pursuant to Pa. R.C.P. 235 and Pa. R.A.P. 521
- November 7, 1986—Order requesting answer to Motion for Reargument be filed. Per Curiam
- November 17, 1986—Answer to Motion for Reargument
- December 18, 1986—Motion for Reargument denied

Supreme Court of Pennsylvania

January 20, 1987—Petition for Allowance of Appeal from
the Decisions of Superior Court dated October 23, 1986 and
December 18, 1986 filed

February 5, 1987—Brief in Opposition filed

May 27, 1987—Judgment entered. Petition denied, Per Curiam

IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION

Case No. FD83-06955

File No. _____

CHERLYN CLARK,
Plaintiff

v.

GENE JETERS,
Defendant

APPLICATION FOR CHILD SUPPORT SERVICES

I, Cherlyn Clark, request the Domestic Relations Division to provide CHILD SUPPORT services to which I am entitled upon application under federal law and the Child Support Enforcement Program of Pennsylvania.

If necessary, I request use of the Parent Locator Services, and help if necessary in establishing paternity.

My case began 8-2-83. This confirms that any child support services I requested before this form was available were sought and applied for under the Child Support Enforcement Program, described in Public Law 93-647 (1975).

Signature: Cherlyn Clark

Print Name: _____

Date: September 22, 1983

Counselor: _____

IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION

Case No. FD83-06955

COMPLAINT FOR SUPPORT

FIPS CODE: S42 CTY 003

Support for: 1 child X New -- Amended

Allegheny County X

PLAINTIFF(S)

Cheryln Clark

vs

DEFENDANT(S)

Gene Jeter

PLAINTIFF INFORMATION:

Name: Cherlyn Clark

Address: 2525 Chauncy Drive

Pittsburgh, PA 15219

Birthdate: 10-29-49

Social Security No. 191-04-0515

Telephone No. 621-0539

DEFENDANTS FOR WHOM SUPPORT IS SOUGHT:

Tiffany Clark 6-11-73

DEFENDANT INFORMATION:

Name: Gene Jeter

Address: 2342 Webster Avenue

Pittsburgh, PA 15219

1. Date Married: _____, Location: _____
Common Law: — yes — no.
2. If not married, state name, date, place of birth of
each child born out of wedlock:
Tiffany Clark 6-11-73 Mercy Hospital
6. Amount of Public Assistance received for: Mother
and 1 child
Amount: 131.00 Per: 2 weeks
State if claim is assigned IV-D Agency: — yes — no.
7. Amount of support asked for spouse and child(ren),
parent(s), or child(ren) only:
Undetermined
9. Set forth any information to aid in locating the
defendant:
Age: 46 Weight: 170 Height: 5'11" Color of hair:
Black Race: Black
Color of eyes: Brown Glasses: — yes X no Scars/
marks: _____

WHEREFORE, Plaintiff respectfully prays that an order be entered against Defendant in favor of Plaintiff in the amount of \$—— per month for support of Plaintiff and/or child(ren) and/or parent(s) or child(ren) over 18 years of age.

I verify that the statements made in this Complaint are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

/s/ Cheryl Clark
Plaintiff's Signature

DATE: 8-2-83

IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION

Case No. FD 83-06955

CHERYLN CLARK,
Plaintiff

vs.

GENE JETER,
Defendant

ORDER OF COURT FOR BLOOD TESTS AND
SUBSEQUENT CONFERENCE

AND NOW, this 5th day of October, 1983 it appearing to the Court that the defendant has not acknowledged paternity of the child Tiffany Clark born on June 11, 1973 in Pittsburgh, Pa., to Cheryl Clark, mother, the parties are hereby directed to present themselves at the University of Pittsburgh Paternity Testing Laboratory, 3600 Forbes Ave., Pittsburgh, PA. 15213, promptly at 8:00 a.m. on October 17, 1983 for blood tests. Parties are to remain until permission to leave has been granted by the person in charge.

Doctors Bruce Rabin and G. Singh, or such other medical doctors or technicians who are designated by them or either of them, are hereby appointed by the Court to make the blood tests, to take or direct the taking of such number or samples of blood from the respective persons and to repeat the process of taking additional samples of blood from their respective persons to enable the examiners to make and perform such tests for the Court with a view to advising the Court of their professional opin-

ions concerning the possibility, probability, or certainty of whether the alleged father could be the biological father of such child.

If any of the parties call the doctors hereinabove named as expert witnesses, the costs of said experts shall be paid in advance by the parties calling them.

Failure to appear will constitute *Contempt of Court*, and the party failing to appear will also be charged with the costs of the blood tests.

IF ANY PARTY REFUSES TO SUBMIT TO SUCH TESTS OR FAILS TO APPEAR, THE COURT MAY RESOLVE THE QUESTION OF PATERNITY AGAINST SUCH PARTY.

In the event that Defendant is excluded by the blood tests, an order will be issued by the Court.

If Defendant is not excluded, it is FURTHER ORDERED that the parties hereto are directed to appear before J. L. Ward, Counselor, or whomever else may be designated on the 17th day of November, 1983 at 10:15 a.m., to review the blood test reports and to determine the future course of this case.

Failure to appear at the conference may result in a hearing being held at that time and the Court may resolve the question of paternity.

THIS IS YOUR FINAL NOTICE TO APPEAR FOR BLOOD TESTS AND CONFERENCE. You may be entitled to be represented by court appointed counsel, free of charge, if you are indigent.

BY THE COURT:

/s/ Musmanno, J., J.

IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION

[Title omitted in printing]

ORDER OF COURT FOR PRE-TRIAL CONFERENCE

AND NOW, to wit, this 24th day of January, 1984, the Court being informed that a conference was held with the parties subsequent to the report of blood tests. Notwithstanding the said report, the defendant will not acknowledge paternity of the child, Tiffany Clark, born on June 11, 1973 to Cheryl Clark, mother.

A pre-trial conference shall be held by the Court with all the parties, and their attorneys, who shall appear on the 16th day of February, 1984, at 2:15 p.m. before Strassburger, Judge.

If plaintiff fails to appear for pre-trial conference as above scheduled, the Sheriff of Allegheny County will be directed to bring the plaintiff to Court.

If the defendant fails to appear for pre-trial conference, paternity will be established against him and an appropriate order for support and cost of blood tests will be entered against him.

NO ADDITIONAL NOTICE WILL BE GIVEN TO THE PARTIES.

BY THE COURT:

/s/ Strassburger, J.

IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION

(Title Omitted in Printing)

**MOTION TO DISMISS COMPLAINT
AND ENTER JUDGMENT IN FAVOR OF DEFENDANT**

Defendant, Eugene Jetter, by his attorney, Craig A. McClean, Esquire, hereby moves this Honorable Court for an order dismissing the complaint herein and directing entry of Judgment in favor of defendant pursuant to the provisions of 42 Pa.C.S.A. § 6704(e).

This motion is based on the ground that plaintiff's action has no merit in that the action is barred by the statute of limitations.

This motion is based on the pleadings of record herein and on the affidavit of Eugene Jetter filed herewith.

Respectfully submitted,

/s/ Craig A. McClean
CRAIG A. MCCLEAN
Attorney for Defendant

COMMONWEALTH OF PENNSYLVANIA :
: ss.
COUNTY OF ALLEGHENY :

**AFFIDAVIT IN SUPPORT OF ANSWER TO MOTION
TO DISMISS COMPLAINT AND ENTER JUDGMENT
IN FAVOR OF DEFENDANT**

Before me, the undersigned authority, personally appeared EUGENE JETTER, who, being duly sworn according to law, deposes and states as follows:

1. that Tiffany Clark was born on June 11, 1973;
2. that he is *not* the father of Tiffany Clark;
3. that the action for paternity filed against him was filed in 1983, a period of time in excess of six years from the child's date of birth;
4. that he never voluntarily contributed to the support of Tiffany Clark; and
5. that he never acknowledged in writing his paternity in regard to Tiffany Clark.

/s/ Eugene Jeter
EUGENE JETTER

SWORN to and subscribed before me this 23 day of Nov., 1983.

/s/ Carol A. Kronz
Notary Public

(Notary Seal Omitted in Printing)

IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION

(Title Omitted in Printing)

**PLAINTIFF'S ANSWER TO DEFENDANT'S MOTION TO
DISMISS AND TO ENTER JUDGMENT IN FAVOR OF
DEFENDANT AND PLAINTIFF'S MOTION TO ENTER
JUDGMENT IN FAVOR OF PLAINTIFF
ON THE RECORD**

Plaintiff, Cheryln Clark, by her attorneys, Neighborhood Legal Services Association and Evalynn Welling, hereby answers Defendant's Motion to Dismiss the Complaint and to Enter Judgment in favor of the Defendant and further moves this Court to direct entry of judgment in favor of Plaintiff as follows:

ANSWER

1. The statute which Defendant claims bars Plaintiff's action (42 Pa. C.S.A. Section 6704(e)) is unconstitutional and violates Plaintiff's rights and her daughter's rights to equal protection and due process guaranteed to them by the Fourteenth Amendment of the United States Constitution.

2. Even if the statute is not unconstitutional, its operation has been tolled by the fraudulent or misleading actions and inactions of the Department of Public Welfare and the threats and assault by Defendant which prevented Plaintiff from an earlier filing of her Complaint for Support.

**MOTION FOR ENTRY OF JUDGMENT
IN FAVOR OF PLAINTIFF**

3. The blood test performed by the Court-appointed laboratory in the within case reveals a probability of 99.3% that Defendant is the father of Tiffany Clark.

4. This motion is further based upon the pleadings and blood test records herein as well as on the attached affidavit of Cheryln Clark filed herewith.

Respectfully submitted,

/s/ Evalynn Welling
EVALYNN WELLING
Attorney for Plaintiff

AFFIDAVIT IN SUPPORT OF ANSWER TO MOTION
TO DISMISS COMPLAINT AND ENTER JUDGMENT
IN FAVOR OF DEFENDANT

Cheryln Clark, who, being duly sworn according to law, deposes and states as follows:

1. That she is the Plaintiff in the above action and the mother of Tiffany Clark, born June 11, 1973.
2. That Eugene Jeter is the father of Tiffany.
3. Cheryln Clark dated Eugene Jeter for ten months prior to the conception of Tiffany. Mr. Jeter was married at the time.
4. When Plaintiff told Eugene in September, 1972 that she was pregnant, he insisted she get an abortion. He repeatedly insisted that she get an abortion and she repeatedly refused.
5. On one occasion after she told Eugene that she would not get an abortion, he drove her to the parking lot of a store in Oakland, pushed her down between the bucket seats of the car, began choking her and told her he did not want to be involved. When he released her, he beat the steering wheel of the car and threatened her again.
6. After this incident she terminated her relationship with Eugene Jeter.
7. Plaintiff listed David Green, a fictitious person, as the father of Tiffany on Tiffany's birth certificate rather than Eugene Jeter, because she was afraid of being physically harmed by Mr. Jeter.
8. When she applied for public assistance on or about June, 1973, she told her caseworker that David Green was the father of Tiffany and that she did not know his whereabouts.

9. On or about July 1973, when Tiffany was approximately one month old, in response to a request she made for money for Tiffany, Mr. Jeter drove a friend to her house and had the friend deliver \$10.00 to pay for milk for Tiffany.

10. On or about August 1973, she met with Eugene Jeter at her sister, Rose Carter's home, to discuss Tiffany's support, at which meeting Mr. Jeter refused to provide her with support.

11. On or about the last week in December, 1977, Mr. Jeter gave her \$25.00 for a Christmas present for Tiffany.

12. On or about June, 1978, Mr. Jeter gave her \$25.00 for Tiffany after she requested the money. Her cousin, Mr. George Johnson, accompanied her to Mr. Jeter's barber shop when she received the \$25.00.

13. On or about August 1978, she informed her caseworker from the Department of Public Welfare, Joanne Zarzeczy, that Eugene Jeter was the father of Tiffany and David Green was a fictitious name. An application for child support services was made by the caseworker and an interview with a support officer was scheduled.

14. On or about August 1978, she met with a support officer and provided him with Eugene Jeter's address and the license plate number of one of his cars.

15. Plaintiff was not told in August 1978 by her caseworker or the support officer that it was necessary for her to make application for support payments in the Family Division of the Allegheny County Court of Common Pleas.

16. On or about late May or early June, 1981, on two different occasions, Eugene Jeter gave her money for Tiffany's support; the first time, occurred when they met in front of Vann Elementary school and he gave her \$30.00 in response to her request for money. The second

17. From 1978-1983, she periodically asked her caseworker at the Department of Public Welfare about Mr. Jeter's responsibility to support Tiffany, but she was not told what action was being taken by the Department. She was not told at any time until 1983, that she was responsible for going to the Family Court Division to file for support. During this period she had four different caseworkers.

18. On or about August, 1983, her caseworker, Pauline Dougherty, for the first time, told her that she would have to go to the City County Building to file for support, which she did.

19. On October 5, 1983, a support hearing was scheduled but Mr. Eugene Jeter did not appear. The counselor at that hearing told her that given the circumstances, it would be necessary for her to file a paternity action against Mr. Jeter. The counselor had her fill out the necessary forms to file the paternity action.

20. On or about October, 1983, she called Mr. Jeter and asked him why he did not come to the support hearing at which time he threatened her and told her he would give her money if she would drop the case.

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF ALLEGHENY)

BEFORE ME, the undersigned authority, a Notary Public in and for said County and Commonwealth, personally appeared Cheryl Clark, who, upon being duly sworn according to law deposes and says that the facts set forth in the foregoing Affidavit are true and correct to the best of her knowledge and belief.

/s/ Cherlyn Clark

SWORN TO and subscribed before me this 8th day of February, 1984.

/s/ Karen J. Monk
Notary Public

IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION

(Title Omitted in Printing)

TRANSCRIPT OF HEARING

* * * *

[3] WEDNESDAY MORNING SESSION

May 8, 1985

(Thereupon, all witnesses were sworn.)

THE COURT: We are here today on an issue framed by defendant's motion to dismiss the complaint and plaintiff's answer thereto and basically the question is whether the Statute of Limitations bars this paternity action. I guess for procedural purposes, we can stipulate as to the date of birth of the child and the date that the complaint was filed.

The child was born June 11, 1973 and the complaint was filed, it doesn't really matter which date is used, either September 22 or September 23, 1983. I generally use the date on the document that is filed with the Court here. There sometimes is a delay in taking the papers over to the Prothonotary's Office. In this case it is a shorter delay than usual, only one day. It doesn't really make any difference whether we use the 22nd or [4] 23rd, just so we have a single date. I will call it the 22nd.

MISS WELLING: Fine.

THE COURT: With that as the preface, it would seem that the defendant made out a prima facie case that the statute has been run, and, therefore, the burden would then shift to the plaintiff to show why this statute has been tolled for one reason or another. I think it is the plaintiff's burden of going forward at this point.

MISS WELLING: We will proceed at this time, Your Honor. We have a stipulation to enter into on the record between Mr. McLean and myself. We are stipulating to the admission of the birth certificate of Tiffany Lynn Clark as Exhibit 1.

THE COURT: Slow down. This is Plaintiff Exhibit 1, the birth certificate.

MISS WELLING: Yes. The application for child support services, Pennsylvania Child Support Program is Exhibit 2.

THE COURT: The date on that?

[5] MISS WELLING: 8/17/78. Authorization to change beneficiary and to pay order in arrearages to Commonwealth of Pennsylvania, Department of Public Welfare.

THE COURT: Would you go through that again?

MISS WELLING: Authorization to change beneficiary and to pay order and arrearages to the Commonwealth of Pennsylvania, Department of Public Welfare. Exhibit 3.

THE COURT: The date on that?

MR. McLEAN: 8/16/78.

MISS WELLING: Notice of support referral, Department of Public Welfare, 8/16/78 is Exhibit 4. And child support action notice August 17, 1978. That would be Exhibit 5. Exhibits 1 through 5 are contained in Cherlyn Clark's Department of Public Welfare case record.

I have the caseworker here to testify, but because of this stipulation we will now let her go.

THE COURT: I think maybe we better [6] keep her here for a few minutes.

MS. WELLING: That is the end of the stipulation.

THE COURT: Put the caseworker on, there may be a couple of questions that I want to ask her.

MR. McLEAN: I am not stipulating, all I am doing is not objecting.

THE COURT: To authenticity.

MR. McLEAN: Authenticity of documents, that's all.

MISS WELLING: I was intending to have Ms. Rhodes testify solely as custodian of records. She was not the caseworker on this record at anytime.

THE COURT: This raises some questions I have.

DOLORES RHODES,

called as a witness herein, being first duly sworn, was examined and testified as follows:

[7] DIRECT EXAMINATION

BY MISS WELLING:

Q State your name for the record.

A Dolores Rhodes.

Q Ms. Rhodes, your occupation?

A Income Maintenance Worker Two, Commonwealth of Pennsylvania.

Q What does an Income Maintenance Worker do?

A I am the caseworker for Cherlyn Clark and other clients.

Q As the caseworker, what function do you perform?

A I determine whether they are eligible for assistance, determine the amount of the assistance they get, the benefits, I really take care of their whole case.

Q And as part of that function as being the caseworker, are you custodian of a Public of Welfare, Department of Public Welfare case record?

A Yes.

Q Was there such a case record compiled for Cherlyn Clark?

A Yes.

Q Are you presently the custodian?

A Yes.

[8] Q Are these case records kept in the normal course of business of the Welfare Department?

A Yes.

Q Are the contacts and information having to do with the individual recipient of Welfare contained in the case record?

A Yes.

Q Are they written down contemporaneously, or close to the same time that they occur?

A Yes.

Q When did you come on this case yourself?

A I think it transferred to me last year, I'm not certain. It is written in the dictation there.

Q I will give you the record.

A I'm pretty sure it was April of last year. It was April of '84 when I took over the case record.

Q Were you an employee for the Department of Public Welfare in 1978?

A Yes.

Q Are you aware of what the policy is and procedures in the handling of support actions from the Welfare Department were at that time?

A I wasn't a caseworker at that time, I was in clerical [9] as a clerical worker.

MISS WELLING: Those are all of my questions.

THE COURT: Do you know if Ms. Clark would have been directed to come down to the Domestic Relations Department to file a support complaint?

THE WITNESS: Yes, it is an eligibility requirement before you could be put on assistance that you go to the Court to file for support.

THE COURT: Apparently she did not do that?

THE WITNESS: I can't say if she did or not.

THE COURT: We don't have a complaint filed until 1983 and she apparently was on Welfare at least as early as 1978?

THE WITNESS: If you can claim good cause like if you are afraid of the man or afraid that he may bother you, you can claim good cause and they will let you not file for support.

THE COURT: Would that have been in [10] writing?

THE WITNESS: Usually a form. One thing, there may have been at one time more to this record. In the last two years we have been allowed to purge records, that meant, I will see her tomorrow for redetermination interview. Once I see her, I will take everything of this record from 1980 and throw it away.

THE COURT: If you throw things away, do you have a record, would there be no record of what was thrown away?

THE WITNESS: No, we are allowed to purge them. They want them purged.

THE COURT: You don't even have a listing of the documents thrown away when you throw them away?

THE WITNESS: No, we are supposed to keep all the support records of payments. Anything other than that, you are supposed to purge. We have been directed to purge them. I don't know, whoever had the record before me if anything had been thrown away.

[11]

CROSS-EXAMINATION

BY MR. McLEAN:

Q Can you tell from your records whether Miss Clark was receiving welfare for the benefit of her child, Tiffany Clark before August 16 of 1978?

A It should be on the face sheet. Right here, this record was opened, this is usual. This date here is usual when this case was opened. This case here is 9/26/79, right here. On the face sheet. There is not an older face sheet. I have to assume this is when she first made application.

THE COURT: When? In 1979? These documents are from '78.

THE WITNESS: Well, there could have been an older face sheet in there since you could purge the record, that may have been destroyed.

THE COURT: The child support action notice has dates referred to child support unit of October 2, 1975.

THE WITNESS: This is the latest face sheet. They do change them. It might have been filled up. That is the last entry on [12] there.

BY MR. McLEAN:

Q I will show you that document that Judge Strassburger mentioned. I will ask you if you can from this document ascertain whether the child was receiving welfare prior to August 16 of 1978?

A This would have been filed, one of our forms that she would have been sent, that, this is making me nervous. This is one of our forms we would have had to have in our records if this child was receiving assistance. This worker works at my office now.

Q Are you aware whether the requirement that as a condition of eligibility the claimant named a father existed in 1975?

MISS WELLING: Objection, she testified she wasn't involved with being a caseworker, she was clerical.

THE COURT: Overruled, she can answer the question.

THE WITNESS: No, some people said they didn't know who the father was.

[13] BY MR. McLEAN:

Q Was it a requirement—

THE COURT: The question was, are you aware whether it was a requirement?

THE WITNESS: No, I'm not aware.

BY MR. McLEAN:

Q Are you aware whether in 1975 a person had to file a support action?

A Yes, I am, they did.

Q Are you aware in this case whether Miss Clark ever filed a support action against David Green?

A No, I'm not, I wasn't there at the time.

THE COURT: Do we know whether she did, does anybody know whether she did?

MISS WELLING: She knows.

MR. McLEAN: No, I searched the files, Your Honor. I searched both criminal records and searched the records that we have up here and as an officer of the Court, I state that there is no record of an action for support.

THE COURT: We have beat that dead horse. Thank you.

MISS WELLING: What clarification for [14] the record, that last exhibit referred to by Ms. Rhodes was dated 1978. It has notations regarding 1975.

THE COURT: Yes.

MISS WELLING: I call Cherlyn Clark.

CHERLYN CLARK,

called as a witness herein, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MISS WELLING:

Q Will you state your name.

A Cherlyn Clark.

Q Where do you live?

A 2525 Chauncey Drive.

Q When were you born?

A October 29, 1949.

Q Do you know Gene Jeter?

A Yes, I do.

Q When did you first get to know him?

A Back in 1971.

Q What was your relationship at the time?

[15] A We were dating.

Q How old were you then?

A Twenty-one.

Q Were you working?

A Yes.

Q Did you at any time after you started to date Mr. Jeter have sexual intercourse with him?

A Yes.

MR. McLEAN: Objection.

THE COURT: What's the objection?

MR. McLEAN: The line of inquiry isn't material. We are solely here to discuss specific issues which are related to only the issues of statute and estoppel.

THE COURT: With the possible exception of one case in history, there haven't been any children born without sexual intercourse.

MR. McLEAN: We stipulated to the birth of the child.

MISS WELLING: One of the claims we have raised is that of duress which is as a result of an assault which was the result of a conversation having to do with this [16] pregnancy.

THE COURT: It may be relevant for background. If you lose this case you will get your discovery done for the paternity case, what do you care?

MR. McLEAN: Thank you.

BY MISS WELLING:

Miss Clark, about when did you become pregnant?

A Late September or October of '72.

Q Did you have any discussion with Mr. Jeter about this?

A Yes.

Q What was that?

A I told him I was pregnant.

MR. McLEAN: Objection, I would like some statement as to the time.

BY MISS WELLING:

Q About what time did you tell him you were pregnant?

A In the afternoon.

THE COURT: I think what month and what date during the year.

BY MISS WELLING:

Q Was it close to the time you found out you were [17] pregnant?

A Yes.

Q You say you told Mr. Jeter one afternoon close to the time you found out you were pregnant. What was his reaction?

A He said, "I knew it."

Q Did he say anything else?

A No, not at that time.

Q Did you have any other conversations with him later?

A Yes.

Q What did he say then?

A He said to me, "I want you to have an abortion."

Q What was your response?

A I said, "I'll think about it."

Q Did you think about it?

A Yes.

Q Did you tell him what you decided after you thought about it?

A Yes, I did.

Q What did you tell him?

A I told him I wasn't going to have no abortion.

Q What happened then?

A Well, he drove me home.

[18] Q You were in the car?

A Yes.

Q In his car?

A Yes, his car. When I told him I wasn't going to have an abortion, he drove off and he drove down Bedford Avenue real fast. He went through all the stop signs. We ended up on the Blvd. and he swung in Isaly's parking lot.

Q The Blvd. of The Allies?

A Right. He pushed me down between the front seats of the car and he straddled me and started choking me.

Q Were you smaller then than you are now?

A Yes, I was.

Q What was your approximate weight?

THE COURT: A lot of us were.

MISS WELLING: Isn't that the truth.

THE WITNESS: About 135, 140.

BY MISS WELLING:

Q So he pushed you down between the seats in his car?

A Yes.

Q What kind of car was it?

A I believe a Firebird.

[19] Q Bucket seats?

A Yes.

Q What happened after he pushed you down?

A Well, he just started choking me saying you're going, excuse my language, fuck me up, you know, he kept saying that over and over.

Q Then what happened?

A I was crying and he got off me and he pulled out of Isaly's parking lot and drove down past Magee Hospital. He stopped. He started beating the steering wheel repeating himself, "you're going to fuck me up", over and over again. And then he drove me home. I got out of the car.

Q This incident happened right after you told him you weren't going to have an abortion?

A Yes.

Q Had you ever known Mr. Jeter to carry any weapons?

A Yes.

Q What?

A I have seen him with a gun on him before.

Q What was your response to this incident when he was choking you and you were yelling, was he yelling at you?

[20] A Yes, he was.

Q What was your response?

A I was very afraid and I was crying because he hurt me at that time.

Q Did you continue in the relationship?

A No.

Q How did you break it off, did you?

A Well, during the time I was pregnant, we just didn't talk to each other. He wouldn't come near me. He wouldn't have anything to do with me. He said, "If you have that baby, that's all on you."

Q Did you talk to anybody in your family about the incident with his choking you?

A Yes, I did.

Q Who did you talk to?

A My sister.

Q What is her name?

A Rose Carter.

Q Did you tell her about it close to the time that it happened?

A Yes.

Q Did you confide in anybody else in your family about it?

A No.

[21] Q Why was that?

A I knew that if I was to tell my family, my brothers would probably have gone down to his job and they probably would have had some trouble.

Q What kind of trouble do you think?

A A fight.

Q Tiffany was born in June of 1973?

A Yes.

Q You didn't list any name on her birth certificate, did you?

A I listed David Green.

Q I think in the birth certificate—

MR. McLEAN: Objection, counsel is making statements.

THE COURT: Sustained.

MISS WELLING: Let me show it to her.

MR. McLEAN: I ask for an offer of proof on this showing. There is no statement from the witness that there is any loss of memory or anything else to warrant her being shown that document.

MISS WELLING: Your Honor, it is an [22] exhibit in the case. I want to show her the exhibit and ask her some questions about it.

THE COURT: You can do it, but, of course, the statement she listed David Green is on the record.

MISS WELLING: That is correct.

BY MISS WELLING:

Q This is Exhibit 1 which came out of your welfare record. I see here that it said birth certificate for Tiffany?

A Yes.

Q It says sex, female. It has her name. David Green is not listed on there. What explanation did you have for that, you just testified you listed David Green.

A I made up the fictitious name because after Gene jumped on me that time, I was afraid to list him. I didn't know what he would do to me.

Q So Gene Jeter is not listed on this exhibit, that is for the reason you just said?

A Right.

Q At the time Tiffany was born, did you apply for [23] welfare?

A Yes, I did.

Q And did you tell the Welfare who the father was?

A Yes, I did.

Q Who did you tell Welfare that the father was?

A David Green.

Q Why did you tell Welfare that David Green was the father?

A Well, I just made up that name. They know she had to have somebody for a father. I just made up that name.

Q Did you tell the Welfare people you were making up a name?

A Not at the time I didn't.

Q After Tiffany was born, did you see Gene Jeter again?

A Yes.

Q Did you ever in the first few months after Tiffany was born, receive any support from him?

A Well, when Tiffany was two months old he came to my sister's house and we had a discussion about support. At that time he said he knew this was going to happen and he didn't have any money to help support her.

Q This was at your sister's house?

[24] A Yes.

Q Did he ever send you any money to the house around that time or before?

A Yes.

Q Do you remember when that was?

A Yes, I got \$25 from Gene in December of 1977.

Q I'm talking about right after Tiffany was born, did he give you any milk money for the baby?

A Yes, he did.

MR. McLEAN: Objection, Your Honor, I would like to make a request here. Please let the record show that the witness has in her hand a piece of paper. I have

noticed the witness from the questions which have been directed to her referring to this piece of paper. I believe she is testifying from this piece of paper and that the words that she is putting on the record in answer to these questions aren't her own words and I request to see the piece of paper right now.

THE COURT: You are entitled.

MISS WELLING: Go ahead.

[25] MR. McLEAN: Let the record show I am giving the piece of paper back to the witness.

THE WITNESS: Thank you.

BY MISS WELLING:

Q Miss Clark, what is on that piece of paper?

A I just have here the times Gene has given me money.

Q Where did you get those times from?

A That's the times he really gave me money. I just wrote them down because I knew I would be nervous up here and I did not want to mess up, you know.

Q Something you wrote down yourself?

A I wrote this down myself.

Q Did you write it down from your own memory?

A From my own memory, yes.

Q You wrote it down so you wouldn't be nervous and forget when you got up here?

A Right.

MR. McLEAN: Your Honor, may I have some inquiry whether the witness's testimony with respect to these events and specific times has been exhausted and whether she is testifying from the piece of paper or whether [26] she actually does remember? I think I am entitled to that.

MISS WELLING: I think she just testified she had written down this stuff from her own memory. I will ask her.

THE COURT: Well, she's supposed to testify from her own memory without any aids unless she needs the

aid after she said she can't remember to help refresh her recollection. If she has no recollection at all, then she can use the document that is past recollection recorded, if it meets the standards for that exception to the hearsay rule. Apparently this doesn't. It might meet the exception for present recollection refreshed. We are in no person's land at this point.

BY MISS WELLING:

Q Miss Clark, let's go back and just try, fold up your piece of paper now, and let's go back to the things you actually remember. Things you remember here today. If you find you can't remember something, then we will talk about whether you can look at the piece of paper to help you remember [27] the dates. In the first couple of months after Tiffany was born, in the summer of 1973, you had testified you had gotten some money from Mr. Jeter to help pay for milk. Do you remember how much money it was?

A I believe it was about \$10.

Q How did you get that money?

A He sent the money in by some young man to give to me.

Q He didn't actually come to your house?

A No, he did not.

Q Some young man came?

A Yes.

Q How did you know it was Mr. Jeter who sent it?

A He told me that Gene sent the money.

Q Did you see Gene at that time?

A He was parked outside in the car.

Q He didn't come in?

A No, he didn't.

Q Also during that same summer when you were talking about, you testified you had some kind of meeting with Gene after Tiffany was born.

A Yes, I did.

Q How old was Tiffany at this time?

[28] A I believe she was two months old.

Q Had you called up Mr. Jeter to initiate this?

A No, I didn't.

Q The meeting went on at your sister's house?

A Yes.

Q Miss Rose Carter?

A Yes.

Q What happened?

A We discussed support. He said, "I knew this was going to happen and I can't support Tiffany." He said, "I might give you something from time to time, but that is all I'm going to do."

Q Was this a calm meeting?

A Not really.

Q Was there any anger expressed by anyone?

A Well, I could tell he was mad. I was upset, you know, but we wasn't shouting at each other.

Q Now, at this meeting, did he give you any money at that time?

A No, he did not.

Q You said he was mad and you were upset, at this time he essentially told you—

MR. MCLEAN: Objection, a lot of [29] latitude as to even specific directions of time.

THE COURT: Your point is made, the objection is sustained. There is not enough time for speeches.

BY MISS WELLING:

Q What I am trying to ask you, why didn't you file a support complaint after you had this conversation with Mr. Jeter?

A Well, I still was afraid that if I made it legal, I didn't know what he would do.

Q Why is that?

A Because when I was pregnant, he attacked me that one time and I didn't know what he would do if I really made it legal.

Q What do you mean by really made it legal?

A Well, came down here and made him support Tiffany, put him down as her father.

Q How was that different from just asking him for money?

A Well, I knew that he has given me money a few times. He didn't seem to be upset about that. I knew that if he was made to do it, he would not really [30] want to do it. I didn't know what he would try to do to me.

Q Now, did you ever later receive any more support payment from him?

A Yes.

Q Do you remember what the next one was?

A I believe December of 1977.

Q Is that around Christmas time?

A It was after Christmas.

Q What was the circumstances then?

A He came up in my home and gave me \$25 for Tiffany for some shoes.

Q Had you asked him to give you the money?

A Yes, I did.

Q How did you ask him?

A I called him up and I asked him would he please buy her something for Christmas. He said, "What does she need?" I said, "Some shoes." So he brought up \$25.

Q And then after that Christmas of 1977, did you again get any more money from him?

A Yes, I believe June of 1978.

Q What happened then?

A I went to his shop.

[31] Q What kind of shop?

A A barber shop at that time. He gave me, I think \$25 for Tiffany's birthday.

Q Her birthday is in June?

A Yes.

Q When you went to the shop, what was your conversation with him at that time, if you can remember?

A I asked him, I said her birthday is next week and would you give me something for her birthday and he gave me \$25.

Q Did he give you any more money then?

A No, not then.

Q After that time?

A Yes.

Q When was that?

A He gave me some more money I believe it was the next year. I would have to refer to my notes.

Q Let's go back here, this was in June of 1978 that you said he, you went to the barber shop and he gave you \$25 for her birthday. The exhibits that have been entered in this case show that in August of 1978 you apparently went to the Welfare Department to talk about Gene and [32] support. Can you explain to the Court what went on then?

A Well, I came down and spoke with the claim officer and I gave them Tiffany's father's correct name and I gave them his address and everything I knew, all the information I had on him. I told them that I wanted to file support for Tiffany.

Q What happened that made you decide to go legal, whatever, at this point?

A Well, I became frustrated because Gene never really wanted to help support Tiffany. He didn't mind giving money now and then, but that just wasn't enough. You know, so I just felt confident and I felt that it was time I took a stand and just came forth with the truth.

Q Were you no longer afraid at that point?

A No, I was not.

Q Why do you think you weren't afraid anymore?

A Well, because I'm older and I have matured and I just feel as though it was the right thing to do.

Q Now, I would like to show you the exhibits. These are papers that have been entered as Exhibits 2 through

5 in your case as the application [33] for child support services, authorization to change beneficiary into, pay order and arrearages. Notice support referral and child support action notice. Have you seen those papers before?

A Yes.

Q Were these papers that you were involved in having filled out in 1978 when you went to the Welfare Department?

A Yes.

Q What was your intent when you cooperated with the Welfare Department in filling these papers out?

A My intent was to try to get support for Tiffany.

Q And at the time that you did this, did you tell me whether or not you felt there was anything else you had to do in order to get support for Tiffany?

A No, I did not. I thought that once I gave the Welfare the information, that they would pursue it. I didn't know that I had anything else to do.

Q What is it that made you think that?

A Because the Welfare usually got behind women to sue the fathers to take care of these children. [34] I thought once I gave them the correct information, that was all I had to do.

Q At the time that you went to the Welfare Department and gave them this information and these forms were filled out, did anyone tell you that you then also had to go to the Court and fill out more papers?

A No, they did not.

Q Did anyone tell you that you had to go to Court at all?

A No.

Q In the next few years after 1978, did you hear anything from anybody regarding your support?

A Yes, one of my workers, Mrs. Farrow, I was discussing this case with her. She told me I have to go to the City-County Building to file support.

Q When was that?

A I believe it was four years later. I don't remember the exact date, in '82 or '83, I don't know.

Q Did you go to Court to file papers with the Court after that?

A Yes, I did.

[35] Q In the time between 1978 and 1982 or 1983, whenever it was that they told you that you had to go to Court, did you talk to the Welfare Department at all about what was happening on your support action?

A Yes, I did.

Q What was the gist of those conversations?

A They would just say it was backlog and they didn't know anything else.

Q Was this in response to questions by you?

A Yes, it was.

THE COURT: I'm not sure what the thrust of this is. I thought in chambers you indicated this fell within virtually identical facts of Astemborski and you weren't pursuing the ground that she had attempted to file by filing with Welfare.

MISS WELLING: Your Honor, as to the state being the grounds for toll of the statute, that's true, I'm not pursuing that. I think the mistake and lack of information are relevant to the Picket and Mills test for determining whether or not the statute is valid in this [36] particular kind of case. Those are factors that I picked up on by those courts as reasons that the six year statute reasons that the statute of limitations in paternity action is inappropriate.

THE COURT: Okay, if you are preserving your grounds for the petition for certiorari to the United States Supreme Court, I will let you make that record. That's a long way away.

MISS WELLING: Yes, it is, Your Honor.

BY MISS WELLING:

Q Now, after 1978, anytime before you actually went to Court to apply for support, did Mr. Jeter give you any more money for Tiffany?

A He gave me, I believe he did.

THE COURT: Since we don't have all day, let her refresh her recollection by looking at the document.

MR. McLEAN: Could I look at the document again, Your Honor? The piece of paper?

THE COURT: The piece of paper, [37] whatever. It is not the magna carta. It is still a document I suppose.

MR. McLEAN: Let the record show I am handing the witness the piece of paper.

THE WITNESS: I received money.

MR. McLEAN: Would you ask her if her recollection is refreshed, please?

BY MISS WELLING:

Q After looking at this paper, is your recollection refreshed as to the answer to my question that you received any more money between 1978 and 1982 or '83 from Mr. Jeter?

A Yes.

Q Without looking at the paper, can you testify from your own memory?

A Yes, the end of May, 1981 I got \$30 from Gene. The following week he gave me \$50.

Q Was that in response to your request?

A The first time when he gave me the \$30 I had approached him about giving me some money for Tiffany. The second time which was the next week he just drove up and said here, here's something [38] for Tiffany.

Q Did he say anything at that time about why he was giving you this money?

A No.

Q Just here, it's for Tiffany?

A Yes.

Q Did he give you any more money between that time, the first week in June, is that what you said?

A The end of May.

Q The end of May, 1982?

A '81.

Q '81, I am sorry. The end of May, 1981, between the end of May, 1981 and the time you went to Court to file the papers, support papers, did he give you any more money for Tiffany?

A No, he didn't.

MISS WELLING: Those are all of my questions.

CROSS-EXAMINATION

BY MR. McLEAN:

Q Miss Clark, did you call him up at any time between May of 1981 and August of 1983 to request money?

[39] A No, I didn't.

Q Did you go to see him?

A No, I didn't.

Q Do you know your welfare caseworker's telephone number?

A Not by heart, no.

Q How often do you go there?

A Every six months.

Q Have you been going there every six months or so since you have been on welfare?

A No.

Q Are you aware whether Welfare is charged with, the individual caseworker is charged you with making monthly reports?

A I don't know.

Q Did you talk with your caseworker over the telephone more frequently than your six months you go and see the person?

A I don't talk with my worker that often, no.

Q Has that been pretty much the way it has been all through since you have been getting welfare?

A During the time I filed for support I kept calling down there to find out what they were doing [40] with

my case. I don't call down there that often other than that.

Q It said that is, you thought that was all you had to do?

A That's right.

Q Why did you think that?

A I thought the welfare would pursue this. No one ever told me that I had to file support papers over here for Tiffany.

Q You have seen those exhibits in this case, is that correct?

A Yes.

Q I am going to show you one of the exhibits that doesn't have a sticker on it. I don't know which one it is numbered, but it is the authorization to change beneficiary pay order arrearages to the Commonwealth of Pennsylvania, Department of Public Welfare, date of 6/75.

THE COURT: Number 3.

BY MR. McLEAN:

Q I ask if you can look down at the bottom of that and identify whether that is your signature?

A Yes, it is.

Q That is your signature?

[41] A Yes.

Q I apologize to the Court and Counsel because I really actually hate this question when it is asked. Miss Clark, do you read and write the English language?

A Yes, I do.

Q Do you understand it?

A Yes, I do.

Q In the first paragraph on this, would you read at the little letter "c" to little letter "d". At the little letter "c" beginning there.

A "The undersigned waives no rights to bring an action for support order or any modification thereof, but

it is understood that the Department of Public Welfare is authorized to institute any action for support in the name of the undersigned and to request modifications of any orders made if the undersigned does not do so."

Q That's all. Now, Miss Clark, you testified that you thought that was all you had to do and nobody told you to go to Court?

A That's right.

Q Nobody told you not to go to Court, did they?

A Nobody told me to come here.

[42] Q Nobody told you not to go?

A No, nobody told me that I had to file those papers here. Nobody.

THE COURT: Please Miss Clark, just answer the question.

THE WITNESS: No, they did not.

MISS WELLING: May we have direction from the Court that Mr. McLean not raise his voice?

THE COURT: They both raised their voices at each other.

MR. McLEAN: Your Honor, with respect to time, I assume that this Court kept good notes. I am not going to ask this witness questions that compare her affidavit filed in this matter with the testimony. If you want me to direct that inquiry, I will, but it is a pleading in the case and she specifically signed it. I am not going to question her on that. If you will take due notice from your notes to compare it with regard to time and amount of support to that affidavit.

THE COURT: Fine.

[43] BY MR. McLEAN:

Q In 1973, with whom were you living?

A My grandmother.

Q Is your grandmother alive today?

A No, she is not.

Q How many brothers do you have?

A Two.

Q Wasn't it your testimony that you didn't confide in these people regarding this problem with Mr. Jeter?

A That's right.

Q Were you in your grandmother's presence as you increased in size during the term of your pregnancy?

A Yes, I was.

Q Did you have any discussions whatsoever with your grandmother regarding the birth of a child and who the father was?

A No, I did not.

Q Did you have any discussions with your brothers about any weddings or who the father of the child was?

A No, I did not.

Q You said that you asserted a fictitious name. Do you [44] know what the word fictitious means?

A Yes.

Q What does it mean?

A I believe made up.

Q False?

A Yes.

Q Inaccurate?

A That's right.

Q A lie?

A Yes.

Q You testified that you didn't know what Mr. Jeter would do?

A That's right.

Q If you came down here and put your name—

A Put his name down.

Q Put his name down. When you say here, you mean this building?

A When I filed for support, that is what I am saying.

Q So, in 1978 you were aware that this is where you came to file an action in support?

A I found out, when it—

Q Answer the question. She can't help you with the times.

[45] A I did not, when I spoke with the claim's officer in 1978, no one told me to come here to file the papers, no one.

Q You said you got older and you matured which is why you did what you did?

A Right.

Q The Welfare caseworker is here today. We have the Welfare files. You didn't out of the clear blue sky decide to call up and name Gene Jeter as the father, did you?

A No, I thought about it.

Q Is it true that Welfare contacted you and was pressing you for a name for the father of this child?

A No, they were not.

Q Isn't it true that at that time Welfare was making a big deal with you about getting somebody to pay for this child other than welfare?

A No.

Q Did you understand that by perhaps filing support, that you could get more money than you were getting on welfare?

A I knew that.

Q You got older, more mature. How old are you now?

[46] A I'm thirty-five.

Q How old were you in 1978?

A I'm getting a bit nervous.

Q Does twenty-nine sound good?

A Good enough.

Q When did you get older and more mature?

A When my daughter—

Q Were you older and mature at the age of twenty-five?

A Not as mature as I am now.

Q You testified that you called up Gene Jeter on the telephone and asked him for money for Christmas?

A Yes, I did.

- Q You said the kid needed shoes?
 A She did.
 Q Was he supposed to mail that to you?
 A He told me he would bring it up to my home.
 Q Did he?
 A Yes, he did.
 Q Who was there, do you have any witnesses?
 A My sister was there.
 Q How about your daughter?
 A She was there.
 Q What about the meeting on the street?
 [47] A It was just him and I.
 Q Before that, before 1977 in December, did you have any meetings with him, did you see him around?
 A Yes, I would see him.
 Q You didn't run and hide, did you?
 A No, I didn't.
 Q You didn't have anything to hide from him?
 A No.
 Q Did you speak with him?
 A Occasionally.
 Q Did you go up to him on the street, did he talk to you?
 A No.
 Q You didn't avoid him, did you?
 A No, I didn't.
 Q You lived in the neighborhood?
 A Yes, I did.
 Q He worked in the neighborhood?
 A Yes, he did.
 Q You weren't afraid of him, were you?
 A I was when I was pregnant.
 Q Back when you were pregnant, but not after that? You had a degree of pride?
 [48] A A while after that I was afraid of him.
 Q A couple years?
 A Yes.

- Q At most? Did you say yes?
 A Yes.
 Q That is what I thought you said.
 A That is what I said.
 Q Your grandmother is not alive now, is she?
 A No, she is not.
 Q When you were with Mr. Jeter and you dated him as you said that you did—
 A Yes, I did.
 Q Where did you go?
 A We went everywhere.
 Q Do you know the names of the people you saw and the places you frequented?
 THE COURT: I said you have a little bit of discovery on the paternity case, I didn't say you could take her deposition here in Court.
 MR. McLEAN: With respect, I'm getting with respect to my specific point in my brief, I have reached the issue of laches. I have shown, I think with this [49] witness without even my witness that memories have failed, that potential witnesses have died and I'm now—
 THE COURT: Either the statute of limitations applies or it doesn't apply. There is no laches in this case.
 MR. McLEAN: I will back off of that.
 BY MR. McLEAN:
 Q Let me see your piece of paper. When did you make this piece of paper?
 A Last night.
 Q Last night, you mean yesterday, right?
 A Last night, yes.
 MISS WELLING: Objection, I object on the ground of relevancy.
 MR. McLEAN: Would you like me to respond, Your Honor? I have a few questions about credibility. I am wrapping this thing up.
 THE COURT: Let's do that.

BY MR. McLEAN:

- Q Where did you get the piece of paper?
 [50] A From my home.
 Q And where did you get the information?
 A From here (indicating.)
 Q Do you remember signing an affidavit in this case?
 A At my attorney's office.
 Q It asserted facts and dates and things?
 A Yes.
 Q Have you recently seen that?
 A Yes.
 Q When did you see it?
 A I saw it yesterday.
 Q Where were you yesterday?
 A In my attorney's office.
 Q I am giving you back your piece of paper. Do you remember sitting in Judge Strassburger's chambers with me and with Judge Strassburger?
 A Yes.
 Q Nobody else was present?
 A Right.
 Q Do you remember the things that you said?
 A Some of them.
 Q Do you have any explanation to this Court why the the things you said now are different from the [51] things you said in your affidavit which are different from the things you are saying in this courtroom today?
 MISS WELLING: Objection, I ask for an offer of proof on that before—there has been no testimony that her statements were materially different than the affidavit from the testimony and no record at all of what was said between the Judge and yourself and Miss Clark when I was not present.
 THE COURT: He didn't ask that question and will not ask that question because he's not going to testify and I'm not going to testify.

MR. McLEAN: I will graciously withdraw the question. If I might have fifteen seconds to collect my wits. That's all the questions I have of this witness.

MISS WELLING: I have a few on redirect.

THE COURT: Be quick. Go ahead.

[52] REDIRECT EXAMINATION

BY MISS WELLING:

Q Miss Clark, you testified in your direct testimony that you were frightened to make it legal to file a support complaint?

A Yes.

Q Up until the time you actually filed it in 1978, do you remember testifying to that?

A Yes.

Q You told Mr. McLean when he cross-examined you that you were only frightened of Mr. Jeter for a couple of years. Tell me, were you talking about the same kind of fear, explain to me what the difference was between being afraid of him till '78 and being afraid until just a couple years ago?

A As I stated, when I was pregnant, I was afraid of him. He carried a gun and he did attack me and I didn't know what he would do to me if I came forth with this information. I feel that I have matured. I feel he is no longer a threat to me. I am doing this for our daughter, not for me. I feel that it is his obligation just as much as it is mine to help take care of her.

[53] Q When you testified in cross-examination that you were afraid for a couple of years, did you mean the same thing as when you said you were afraid up until the filing in '78 with the Welfare Department?

A Yes.

Q So that couple of years meant—

MR. McLEAN: Objection, objection.

THE COURT: Sustained.

MISS WELLING: That's all the questions I have.

THE COURT: You may step down.

MISS WELLING: Your Honor may I ask for a few minutes?

I am due in Bankruptcy Court at 11:00. I will have to make a phone call.

THE COURT: I expect we won't have a whole lot more testimony. I don't imagine Mr. Jeter's testimony will be lengthy?

MR. McLEAN: No, Your Honor, especially if I am permitted to lead.

(Thereupon, a recess was held.)

[54] MISS WELLING: We have another witness.

MR. McLEAN: I thought the plaintiff rested.

THE COURT: I didn't hear her say that.

ROSE CARTER

called as a witness herein, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MISS WELLING:

Q Will you state your name for the record please?

A Rose Carter.

Q Are you the sister of Cherlyn Clark?

A Yes.

Q Have you lived in Pittsburgh since 1973?

A Yes.

Q Since 1973, have you kept in contact with your sister?

A Yes.

Q Did you also know Mr. Jeter?

A Yes.

[55] Q How long have you known him?

A Since they were dating. I knew him prior, but I got to know him better when they started dating.

Q About when was that?

A She was twenty-one or twenty-two, something like that.

Q Were you aware that Mr. Jeter and Miss Clark had broken off?

A Yes.

Q Did you know about when that was?

A After he found out she was pregnant. They kind of stopped seeing each other.

Q Do you know what the reason was they stopped seeing each other?

MR. McLEAN: Objection, I would like to know whether she does know.

THE WITNESS: I do know.

BY MISS WELLING:

Q What was that reason?

A That she was afraid of him because Gene had jumped at her when she told him she was pregnant and he can be intimidating to her. She—

MR. McLEAN: Objection, I would like to have her answer the question. She is [56] talking about—

THE WITNESS: He had jumped on her.

MR. McLEAN: Your Honor—

THE WITNESS: My sister and I talk every day. This incident was brought to my attention.

THE COURT: Do you want to list your objections?

MR. McLEAN: Yes, Your Honor, I ask that the words that were emitted be stricken from the record as being non-responsive to the question. The question was strictly directed to a reason, what that reason was. She is going into her analysis of the mind of the witness and also of my client. I don't think she has the capacity to do that.

THE COURT: Objection sustained. Just answer the question.

BY MISS WELLING:

Q The whole answer to the question is stricken?

THE COURT: I will not try to decide [57] which part is and which part isn't.

MISS WELLING: Can you read the question back?

(Thereupon, the previous question was read back.)

BY MISS WELLING:

Q I had asked you what was the reason that your sister and Mr. Jeter had broken off, if you know.

A She had told me she was pregnant. She was afraid of the reaction afterwards.

Q Whose reaction was that?

A His reaction.

Q Mr. Jeter's reaction?

A Yes, toward my sister.

Q Had your sister talked to you about what his reaction was?

A Yes.

Q What did she tell you about the reaction?

MR. McLEAN: Objection, this is hearsay. Further, we have had—

THE COURT: Your objection is made. Any response to that?

MISS WELLING: Your Honor, I am not [58] asking this to establish the truth of it. I am asking to establish a state of mind of Miss Clark. It is also a statement of a party.

THE COURT: Your party, not an opposing party.

MR. McLEAN: Plus the state of mind is specifically what we are trying to ascertain the truth of.

THE COURT: Objection sustained.

BY MISS WELLING:

Q Miss Carter, without telling me what Cheryl told you about that reaction, what was her reaction that you observed?

A She was very upset, crying, hysterically crying and very nervous.

Q This was in response to what?

A Her telling him she was pregnant.

Q After that time, after the time that she became nervous and upset and hysterical, did you have occasion to talk to Mr. Jeter about Cheryl and Mr. Jeter?

A Yes, I talked with him. Him and I would always talk.

[59] Q Did you ever invite him to come to your house at any time?

A Yes, I did.

Q When was that?

A My niece was about two months old. I went to his place of business to talk with him because I could talk with him. I asked him would he mind at all having a meeting with my sister concerning the baby. At first he didn't want to. He said, well, yes. I said for a little while, talk a little bit.

THE COURT: You are going to have to speak up.

THE WITNESS: Sorry, I said the baby has to eat. So, he said all right, he came over on a Sunday.

BY MISS WELLING:

Q What happened on that Sunday, who else was there?

A My mother was there, my sister and Mr. Jeter and myself. So we talked a little bit, mostly my sister and Mr. Jeter talked. He got upset. He said he would help her a little bit. He said he couldn't, he said I don't have money. He said forget it and [60] walked out.

Q After that meeting when Tiffany was two months old, in your house, did you observe any reaction by your sister to that meeting?

A Yes, my sister was always upset when she would talk to Mr. Jeter. She was not able to talk to him because she was always frightened of him.

MR. McLEAN: Objection, I ask it be stricken.

THE COURT: The last part of that will be stricken.

MISS WELLING: Your Honor, when I asked what her reaction was—

THE COURT: The question was, what was the reaction to that last meeting. The answer was, she was upset. Then she went on to answer a question not asked.

BY MISS WELLING:

Q Did you ever observe Miss Clark, your sister, at any other time being upset about Mr. Jeter?

A Yes.

Q Will you describe the times and what you observed?

A She would be upset prior to making a phone call to him [61] to ask for some assistance.

Q Did that happen—

MR. McLEAN: Objection.

BY MISS WELLING:

Q When did that happen?

MR. McLEAN: Withdrawn.

THE WITNESS: Whenever she would call him.

MR. McLEAN: Objection, she is asking the specific question. If the witness doesn't know, please.

THE WITNESS: She called him in August. She called him in December about '77. These are times I am aware of that I was with her at the time. She wanted something for Christmas. He gave her money after Christmas. She was upset prior to and after.

BY MISS WELLING:

Q Will you describe exactly what you mean by upset?

A She would always be nervous before she would call him so I asked her did she want me to call him. She said no, I'll do it. She would take a deep breath, shake a while and then call. She was nervous.

[62] Q Did you ever take Tiffany to visit or see Mr. Jeter?

A I watched her and would take her with me past the shop. Him and I would talk. He would come outside and talk with me while my niece was there. I would let him see her. She was younger, when she was two or three or something. We would go to the bottom of the hill where the shop was.

Q That was somewhere you could walk to with Tiffany?

A Yes.

THE COURT: Keep your voice up.

BY MISS WELLING:

Q Miss Carter, why did you take Tiffany to see Mr. Jeter?

A My sister was afraid to take her on her own.

Q During what years were you taking Tiffany to see Mr. Jeter?

A When she started to walk, about a year after she started to walk until she was five or six. And then his shop wasn't there any longer. I had a change of jobs. I wasn't able to be with her for as much as when she was younger.

Q You said you were taking Tiffany because your sister was afraid to take Tiffany?

A Yes.

[63] MR. McLEAN: Objection, asked and answered.

THE COURT: Sustained.

BY MISS WELLING:

Q As to your testimony that you took Tiffany because your sister was afraid to, what did you observe that made you believe that your sister was afraid to take Tiffany?

A Just the way she would act. If I would say to her, why don't you take her down past the shop and let him see her because she is getting big. And she said oh no.

MR. McLEAN: Objection.

BY MISS WELLING:

Q When you would suggest to her that she take Tiffany down to the shop to see her, to see Mr. Jeter, what was her response, her reaction without saying what she said?

A I can't, she wouldn't, she would not.

Q From what you observed, what was her state of mind when she was saying that I can't?

A She would be in a nervous state, normal nervous state.

[64] Q Normal?

A When she would talk about Mr. Jeter, that was her normal state.

MISS WELLING: That's all I have.

CROSS-EXAMINATION

BY MR. McLEAN:

Q What is your current address?

A 304 Enright Court.

Q Do you work?

A Yes, I do.

Q Where do you work?

A Sears.

Q How often do you work there?

A Every day.

Q How long have you worked there?

A Ten years.

Q Have you worked there every day for ten years except for vacation?

A Except for days off and vacation.

Q Do you live with Cherlyn Clark?

A No, I don't.

Q Have you ever lived with Cherlyn Clark?

A When we were youngsters.

[65] Q Did you have a meeting with Miss Evelyn Welling yesterday with Miss Cherlyn Clark?

A No.

Q Have you been present in the courtroom during the testimony this morning of your sister?

A Yes, I have.

Q During the break, did you talk with your sister and Miss Welling in the hallway?

A Yes, I did.

Q Did the topic of the conversation concern your testimony?

A Not much of it.

MR. McLEAN: That's all I have of this witness.

THE COURT: Thank you, step down.

MISS WELLING: We rest.

MR. McLEAN: The defense calls the defendant.

GENE JETER,

Called as a witness herein, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. McLEAN:

[66] Q State your name.

A Gene Jeter.

Q Mr. Jeter, you also have been present during this testimony this morning, haven't you?

A Yes, I have.

Q You are the defendant in this case?

A Yes, I am.

Q What is your address?

A 2050 Sunny Drive, Pittsburgh, Pa.

Q You have met with me on various occasions and discussed this case with me?

A Yes, I have.

Q Are you aware of an affidavit which Cherlyn Clark has filed in this case, a pleading in this matter, so I am not going to introduce it in evidence, which lists certain facts beginning prior to the birth of one Tiffany Clark in June 11, 1973?

A Am I aware?

Q Are you aware of that document?

A I am aware.

Q Mr. Jeter, number one, with respect to the testimony which you just heard of Miss Cherlyn Clark's sister, what can you tell the Court, if anything, regarding [67] these visits of Cherlyn Clark's sister and the subject child, Tiffany Clark, to your shop?

A That's not true.

Q Had she ever brought this child down?

A No.

Q With respect to other items, do you own a gun?

A No.

Q And have you ever owned a gun?

A No.

Q Do you carry a gun?

A No.

Q Have you ever carried a gun?

A No.

Q Why don't you carry a gun?

A I got no need for one.

Q With regard to Cherlyn Clark's testimony and Cherlyn Clark's sister's testimony, do you recall meetings that occurred at the sister's house?

A Yes.

Q What can you tell the Court about the invitation you received to that, for that meeting?

A Well, I was asked to come there to discuss support and that was it. I was asked to discuss support of [68] this child.

Q How long did that meeting last?

A Ten, fifteen minutes.

Q At that meeting, what, if anything, did you say regarding being the father of this child?

A I denied it.

Q Have you at all times prior to that denied it?

A Yes, I have.

Q What discussions if any did you have with Cherlyn Clark regarding your being the father of this child? Please be specific as the time and place.

A When I was told about it, the incident, we were supposed to have been in the car. When I was told about it, we had a, somewhat of a heated argument about it. I denied it at that time.

Q Why did you deny it?

A Because she was dating other people.

Q You have heard the testimony here regarding that initial incident. When I speak of the initial incident, I am speaking about when you were told of the pregnancy. You have heard the statements that were made here today that you physically took Cherlyn Clark and put her between the seats, straddled [69] her, choked her and said that you were going to fuck her up or fuck yourself up. What can you tell the Court about the occurrence of that?

A That never happened, for one thing, it never happened. As far as me saying the words she said, you know, I just said that, you know, she made the point of saying that I was the father of the baby after I told her that I didn't think I was and then I drove her back to wherever, I think her mother's house. That was the end of that.

Q Did you ever at any time touch Miss Clark?

A No.

Q At this incident?

A No.

Q Or thereafter?

A No. We had a heated conversation where she got upset and went to crying, that was it.

Q What about this alleged, this incident that Mrs. Clark testified to about milk money.

A I never sent any milk money.

Q Have you ever given Cheryl Clark any money?

A At one time.

Q Would you tell the Court the circumstances?

[70] A At one time I had come into a little luck, and I had seen her on the street which I had more money than usual, I usually have in my pocket. She was talking about, I was asking her how was she doing and she talked about how bad she was doing, whatever. I had the money so I handed it to her as a friend.

Q When did this occur?

A I don't know, that had to be around '83, sometime like that. No, '81, somewhere back in there.

Q Mr. Jeter, do you know exactly when it occurred?

A I really don't know.

Q Mr. Jeter, if you don't know, would you please say you don't.

THE COURT: Before he ruins your case—

MR. McLEAN: Yes, Your Honor.

THE WITNESS: I really don't know. I can't recollect the time and dates.

BY MR. McLEAN:

Q Where in fact did it occur, do you know?

A We was on Watts Street.

Q What is near Watts Street?

A Watts and Wylie Avenue.

[71] Q Is there a school there?

A Yes.

THE COURT: Counsel, approach the bench, please.

(Thereupon, a discussion was held off record.)

BY MR. McLEAN:

Q Mr. Jeter, I have a few more question for you. Other than the one incident of you giving money did you ever give money to Cheryl Clark?

A No.

Q Did you ever give money for the benefit and support of Tiffany Clark?

A No.

Q Have you ever acknowledged that you are the father either in writing or otherwise of Tiffany Clark?

A No.

Q Subsequent to 1973, did you ever see Cheryl Clark in a condition that you would consider her to be afraid of you?

A No, because she lived at the neighborhood where I worked. I see her now and then, in coming and going. She never seemed to be afraid of me about anything.

MR. McLEAN: That's all I have.

[72] CROSS-EXAMINATION

BY MISS WELLING:

Q Mr. Jeter, you don't want to pay support for Tiffany Clark, do you?

A I don't want to pay for a child that is not mine.

Q You don't want to pay support for Tiffany Clark, do you?

A I don't want to pay for a child.

Q Would you answer the question?

THE COURT: Mr. Jeter, answer the question.

THE WITNESS: No.

MISS WELLING: That's all.

THE COURT: Thank you, you can sit down.

**VITAL STATISTICS
CERTIFICATION OF BIRTH**

DATE OF BIRTH 6-11-73
CITY, BOROUGH OR TOWNSHIP OF BIRTH PITTSBURGH
COUNTY OF BIRTH ALLEGHENY


FILE NO. 5428-R
DATE FILED 6-20-73
DATE ISSUED 9-15-77

SUBJECT TIFFANY LYNN CLARK
SEX FEMALE

This is a true certification of name and birth facts on file in vital statistics, Pennsylvania Department of Health.

Charles Haderlein
CHIEF, BUREAU OF
STATE REGISTRY

Lynn Baskin
DEPUTY CHIEF, BUREAU OF
STATE REGISTRY



COMMONWEALTH OF PENNSYLVANIA • DEPARTMENT OF HEALTH

(Fee for this certificate, \$1.00)

WARNING: It is illegal to duplicate this copy by photostatic or photograph.



Nº 190090

1. PLACE OF BIRTH

County

Township

Borough

City

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF HEALTH
VITAL STATISTICS

CERTIFICATION OF BIRTH

File No. 185716-49

Date Filed 11-7-77

Date of Birth 10-29-49
(month, day, year)

3. Name of Child

5. Name of Father

6. Maiden Name of Mother

4. Sex Female

This is to certify, that this is a correct certification of birth as filed in the Vital Statistics office Pennsylvania Department of Health, Harrisburg.

Thomas W. George, MD
Secretary of Health

NOV 21 1968

EXHIBIT 1

EXHIBIT 2

PENNSYLVANIA CHILD SUPPORT PROGRAM
APPLICATION FOR
CHILD SUPPORT SERVICES

Record name Cherlyn Clark.

Record Number 425-28.

County 02.

District Hill.

Worker J. Zarzelzly.

Caseload Number 2122.

Date Applied for Assist. 8-16-78.

Name of Applicant Clark, Cherlyn.

Date of Birth 10-29-49.

Sex F.

Social Security Number 191-40-0555.

Address (Street, City, State, Zip Code) 2423 Bedford
Ave., #375, Pgh. Pa. 15219

County Allegheny.

Phone Number 621-1930.

Name of Applicant's Employer None.

Relationship to Defendant Casual.

Relationship to Children Mother.

State name, date and place of birth, Social Security No.
and residence of defendant's minor children.

Name of Child Tiffany Clark.

Birthdate 6-11-73.

Birthplace Pgh. Pa.

Social Security No. App. for.
 Residence 2423 Bedford Pl. H.
 Name of Defendant Jeter Gene.
 Birthdate 1936.
 Social Security No. Unknown.
 Birthplace Washington, D.C.
 Sex M.
 Address (Street, City, State, Zip Code) 2400 Webster
 Ave., Pgh., Pa. 15219/County Allegheny
 Name of Defendant's Employer Jeter's Barbershop.
 Address (Street, City, State, Zip Code) Wylie Ave.,
 Pgh., Pa.
 Father's Full Name and Address Unknown.
 Mother's Maiden Name Unknown.
 Assistance Authorized for: (Indicate Individuals for
 Whom Defendant is Liable) Tiffany.
 Amount Per Month \$247.00 (83.00)
 Existing Court Order: No
 Date & Amount of Last Payment 6/78.
 Amount 25.00.

/s/ John R. Hoffmann
 JOHN R. HOFFMANN
 Support Officer
 8/17/78

/s/ Cherlyn Clark
 CHERLYN CLARK
 Applicant
 8/17/78

EXHIBIT 3

Authorization to Change Beneficiary and to Pay Order
 and Arrearages to Commonwealth of Pennsylvania,
 Department of Public Welfare

Beneficiary Cherlyn Clark.

Co. Code 02.

Record Number 42528.

Cat. of Asst. C.

Grant Group C.

Defendant Gene Jeter.

County Allegheny.

District (If Applicable) Hill.

IN CONSIDERATION of the public assistance which has been granted, is being granted or which will be granted to the undersigned on behalf of the undersigned and/or on behalf of the defendant's child(ren), the Domestic Relations Division is authorized and requested to: (a) change the name of the beneficiary to Commonwealth of Pennsylvania, Department of Public Welfare, and (b) assign all arrearages owed under the Court Order, and to pay them, when collected, to the Commonwealth of Pennsylvania, Department of Public Welfare, (c) the undersigned waives no rights to bring an action for a support order or any modification thereof, but it is understood that the Department of Public Welfare is authorized to institute any action for support in the name of the undersigned and to request modifications of any orders made if the undersigned does not do so, and (d) if the undersigned participates in any hearing scheduled

by the court, the undersigned authorizes and requests the court to give prior notice of such hearing to the Department of Public Welfare.

In addition to the general provisions contained herein, it is intended that this authorization shall also act as the assignment required by Part D of Title IV, Section 456 of the Social Security Act, as amended on January 4, 1975, by Public Law 93-647, and that this authorization conform with the requirements of the act of June 24, 1937, P.L. 2045, Section 5, known as "The Support Law," as amended.

It is understood and agreed that:

(a) The amount collected by the Commonwealth of Pennsylvania, Department of Public Welfare shall not exceed the total sum of public assistance paid, calculated from the date of the filing of a petition for an order of support with the court:

(b) Upon termination of the payment of public assistance by, and upon receipt of written notice from the Commonwealth of Pennsylvania, Department of Public Welfare, the Domestic Relations Division will change the name of the beneficiary of the court order to the name of the original beneficiary, except that arrears which are owed under the order, on the date the payment of assistance is terminated shall continue to be paid to the Commonwealth of Pennsylvania, Department of Public Welfare, until such time as the Domestic Relations Division has been notified in writing by the Commonwealth of Pennsylvania that the claim against arrearages has been satisfied or withdrawn at the request of the parties or the court. The Department of Public Welfare will send a written statement of the amount due and owing under any court order to the parties of the court, and

(c) All payments made hereunder are to be forwarded by the Domestic Relations Division to the Bureau of Claim Settlement Area Office at:

Client: /s/ Cherlyn Clark
(Signature of Client)
8/16/78

Witness: /s/ J. Zarnegy
(Signature and Title of Staff Employee)
8/16/78

EXHIBIT 4

NOTICE OF SUPPORT REFERRAL

Instructions: Prepare and Distribute as Follows:

Original—Applicant

1st Copy Support Agent with 173-E Attached

2nd Copy CS Area (Control File)

3rd Copy—CAO Record

Case Name Cherlyn Clark.

County Allegheny.

District Hill.

Record No. 42528-C.

Caseload No. 2122.

As part of your application for assistance, you have signed over your rights to support against a legally responsible person. The assignment is required by Title IV-D of the Social Security Act as a condition of eligibility for assistance.

Section 432.6 of the Public Welfare Code (Act No. 202 of 1976) requires that every applicant for assistance, whose eligibility is based on deprivation due to absence of a parent from a home, must be referred for an interview with one of the Department's Support Officials.

IT IS A CONDITION OF YOUR CONTINUED ELIGIBILITY THAT YOU KEEP THE SCHEDULED APPOINTMENT WITH THE SUPPORT OFFICER. FAILURE TO KEEP THE SCHEDULED APPOINTMENT WILL RESULT IN THE COUNTY ASSIST-

ANCE OFFICE PROPOSING TO DISCONTINUE ASSISTANCE FOR YOU AND AUTHORIZING A PROTECTIVE PAYMENT FOR THE CHILD(REN).

Your interview is scheduled for Thurs—8/17, 1978, at 9:00 o'clock a.m., with a Support Officer from the Bureau of Claim Settlement Child Support Unit, at Hill County Assistance Office, 108 Smithfield St., Pgh., Pa. 15222 565-5444.

To help the interviewer, you should bring with you the following items if they are in your possession:

1. Social Security cards or numbers of all persons involved.
2. Birth Certificates of all persons involved.
3. Marriage Licenses or Certificates.
4. Divorce Papers.

Section 432.9 of the Public Welfare Code provides that the Department must maintain a Central Registry of absent parents, therefore, you should also bring the following items if they are in your possession:

5. Driver's Licenses and Owners Cards or Title Certificates.
6. Veterans or other Benefit Papers (disability, retirement, etc.).
7. Military Discharges of all persons involved.
8. Wage Statements or Pay stubs of all persons involved.
9. Mortgage payment book if buying a home.
10. Court documents of any kind (support order, etc.).

/s/ Joann C. Zarzeczny
JOANN C. ZARZECZNY
8/16/78

EXHIBIT 5

CHILD SUPPORT ACTION NOTICE

Instructions: CAO completes form in duplicate, retains copy and sends original to the child support unit of the area claim settlement office.

Co. Code 02.

Record No. 42,528.

Category C.

Grant Group C.

Dist. No. 2.

Record Name CLARK, Cherlyn.

Date Referred to Child Support Unit October 2, 1975.

Address 2435 Bedford Avenue, #375, Pittsburgh, PA 15219.

* * * *

Comments

Ms. Clark had named David Green as putative father of Tiffany on 10-2-75. On 8-16-78, Ms. Clark stated David Green was fictional, and putative father named as Gene Jeter. Cancel PA 173-E's of 10-2-75. New PA 173-E's signed for Gene Jeter.

* * * *

/s/ (Mrs.) Joann C. Zarzeczny
August 17, 1978

IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA

(Title Omitted in Printing)

OPINION

STRASSBURGER, J.

Plaintiff, Cherlyn Clark [Clark] brought this action seeking child support for her daughter, Tiffany Clark [Tiffany] against Defendant, Gene Jeter [Jeter].

To summarize, in 1971, Clark and Jeter began seeing each other. In September, 1972, Clark discovered she was pregnant and informed Jeter that he was the father. According to Clark, Jeter did not want this child and acted abusively towards her. According to Jeter, he denied that the child was his and engaged with Clark in a heated argument. The relationship between the parties thereafter ceased.

On June 11, 1973, Tiffany was born. One David Green was listed on the birth certificate as the child's father. The same name was given to the Pennsylvania Department of Public Welfare [DPW] when Clark applied for welfare in 1973. In August, 1978 Clark informed DPW that Green was in fact a fictitious name and that the real father was Jeter. Several documents were completed at that time including: an Application for Child Support Services; Authorization to Change Beneficiary and the Pay Order and Arrearages to Commonwealth of Pennsylvania, Department of Public Welfare; Notice of Support Referral; and Child Support Action Notice. However, no support complaint was filed against Jeter until September 22, 1983. Jeter filed an answer and new matter to the complaint which denied paternity and raised the statute of limitations. At 42 Pa. C.S.A. § 6704, the statute provides:

“(b) Limitation of actions—All actions or proceedings to establish the paternity of a child born out of wedlock brought under this section must be commenced within six years of the birth of the child, except where the reputed father shall have voluntarily contributed to the support of the child or shall have acknowledged in writing his paternity, in which case an action or proceeding may be commenced at any time within two years of any such contribution or acknowledgment by the reputed father.”

Although Clark concedes that the action was commenced neither within six years of the child's birth nor within two years of the last reported “support” contribution, she argues that the statute of limitations is unconstitutional in that it treats illegitimate children differently than legitimate children. However, such an argument cannot prevail in light of *Astemborski v. Susmarski*, 499 Pa. 99, 451 A.2d 1012 (1982), *cert. granted, order vacated and remanded*, 103 S.Ct. 3105 (1983), *order reinstated*, 502 Pa. 409, 466 A.2d 1018 (1983), which upheld the statute in the following words, after the same equal protection challenge:

“Since the statute is substantially related to a legitimate state interest, viz., the prevention of stale or fraudulent paternity claims, it is not constitutionally infirm under a Fourteenth Amendment challenge even though the statute may operate, at it has in this case, to deprive an illegitimate child of its right to make a claim for support beyond the six year limit.” 466 A.2d at 1022

As alternative arguments, Clark contends that the statute of limitations should be tolled and/or that Jeter should be estopped to assert the statute due to threats made and duress exercised upon Clark. However, Clark's testimony indicates that any fear she may have had of Jeter, even if sufficient to toll the statute, lasted only a

few years after the 1972 incident. There were at least six years after that period during which an action could have been filed.

Based on the facts and applicable law, this court finds that Clark's claim is barred by the statute of limitations. An order in accord with this opinion shall be entered.

STRASSBURGER, J.

July 8, 1985

IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA

(Title Omitted in Printing)

ORDER OF COURT

AND NOW, this 8th day of July, 1985, in accordance with the foregoing opinion, it is hereby ORDERED, ADJUDGED AND DECREED that Plaintiff's complaint for support be and the same is dismissed.

BY THE COURT:

/s/ Strassburger, J.

SUPERIOR COURT OF PENNSYLVANIA
PITTSBURGH DISTRICT

No. 1040 Pittsburgh 1985

CHERLYN CLARK,

Appellant

v.

GENE JETER

ORDER

AND NOW, this 23rd day of OCTOBER, 1986, it is ordered as follows:

X Order affirmed.

BY THE COURT

/s/ [Illegible]

Deputy Prothonotary

IN THE SUPERIOR COURT OF PENNSYLVANIA

(Title Omitted in Printing)

Appeal from the order of the Court of Common Pleas,
Family Division, of Allegheny County,
Family No. 83-6955

Before: ROWLEY, WIEAND, and DEL SOLE, JJ.

OPINION OF THE COURT

Filed: October 23, 1986

BY ROWLEY, J.:

This is an appeal from an order dismissing appellant's complaint for support. Appellant, the natural mother of a child born on June 11, 1973, filed a support action on behalf of the child against appellee, the putative father of the child, in August, 1983, approximately two years and two months after appellee had last provided financial support for the child. Appellee filed an answer and new matter denying paternity and raising the six-year statute of limitations, 42 Pa.C.S. § 6704, as a defense. The trial court dismissed the petition because it was barred by the statute of limitations, because case law had held the statute to be constitutional, and because appellee engaged in no activity justifying the tolling of the statute of limitations.

Appellant has appealed from the order dismissing the action and argues: 1) that the trial court erred in con-

cluding that the six year statute of limitations for support/paternity actions brought on behalf of children born out of wedlock does not violate the equal protection and due process clauses of the United States Constitution;¹ and 2) that the trial court erred in refusing to toll the statute of limitations based on appellee's abusive conduct towards appellant.

Following the filing of the appeal, the legislature enacted a new statute of limitations applicable to determinations of paternity relative to an action for support as follows:

§ 4343. Paternity.

(b) Limitations of actions.—An action or proceeding under this chapter to establish the paternity of a child born out of wedlock must be commenced within 18 years of the date of birth of the child.

Act of October 30, 1985, P.L. 66, Subchapter C § 4343 (b) ([to be codified at 23 Pa.C.S. § 4343(b)]). Appellant petitioned the Superior Court to remand the case to the trial court prior to the Superior Court's disposition of the aforementioned issues so that the trial court could decide the issue of the retroactivity of the new statute, for if the new statute is to be given retroactive application, then the arguments raised on appeal are moot. Appellant's petition to remand was denied. However, we will address the issue of whether the 18 year statute of limitations should be given retroactive effect.

I.

A.

The Statutory Construction Act of 1972, 1 Pa.C.S. § 1926, provides, "No statute shall be construed to be retroactive unless clearly and manifestly so intended by

¹ Appellant has provided no notice to the Attorney General of her constitutional challenge to the statute in violation of Pa.R.C.P. 235 and Pa.R.A.P. 512.

the General Assembly." The new 18 year statute of limitations itself makes no provision for retroactive application, but provides only that the act shall take effect in 90 days. 1985 Pa. Legislative Service #4, P.L. 66, § 4 p. 106. However, when the legislature wants to make a statute retroactive, it clearly and unambiguously does so. For example, when the legislature amended the act providing for Commonwealth Court jurisdiction, it included a clause stating that the act "shall take effect immediately and shall be retroactive to December 5, 1980." Section 404(1) of Act 1982, December 20, P.L. 1409, No. 326. Not only does the 18 year statute of limitations for paternity/support actions not include language suggesting that it was intended to be applied retroactively, but there is no legislative history to support retroactive application of the act. Therefore, we hold that the 18 year statute of limitations for paternity/support actions is not to be applied retroactively.

We find support for our conclusion in *Maycock v. Gravely Corporation*, — Pa. Super. —, 508 A.2d 330 (1986). In *Maycock*, 42 Pa.C.S. § 5533, which tolls the running of the statute of limitations for civil actions during minority, was held not to apply retroactively to a claim which had been barred under the previous statute of limitations in the absence of a clear intention of the legislature for the act to be retroactive. Although not identical to the new paternity/support statute of limitations, the statute of limitations involved in *Maycock* is similar in several material respects for determining retroactivity. Both statutes greatly expand the period during which a minor's cause of action can be brought; both conspicuously lack any indication that the legislature intended for them to be applied retroactively; and both provide a prospective effective date only. Therefore, just as the statute of limitations in *Maycock* is not retroactive, so too is the paternity/support statute of limitations not retroactive.

B.

Even if the statute were to be given retroactive effect, however, it could not revive appellant's cause of action and her complaint would still be time barred. Several courts of this Commonwealth have held that a retroactive statute of limitations can apply only to actions which have not been concluded or barred under the former statute. *Upper Montgomery Joint Authority v. Yerk*, 1 Pa. Cmwlt. 269, 274 A.2d 212 (1971). If the right to sue under the prior statute of limitations has not expired, then the new statute of limitations can be applied retroactively. *In re Cordemnation of Real Estate by Carmichaels*, 88 Pa. Cmwlt. 541, 490 A.2d 30 (1985), interpreting *Seneca v. Yale and Towne Manufacturing Co.*, 142 Pa. Super. 470, 16 A.2d 754 (1940). However, once the right to sue has expired, no subsequent legislation can revive it. *Overmillar v. D.E. Horn and Co.*, 191 Pa. Super. 562, 159 A.2d 245 (1960).

In the instant case, the child was born in 1973, and the last voluntary support payment for the child from appellee was made in June, 1981, two years and two months prior to the filing of the complaint for support in August, 1983. The statute of limitations applicable when the Complaint was filed required the action to be commenced within six years of the birth of the child or within two years of the last written admission of paternity or voluntary payment of support. 42 Pa.C.S. § 5704(e). Thus appellant's cause of action expired in June 1983 when the child was ten years old and two years after appellee's last voluntary support payment. The new 18 year statute of limitations became effective in January, 1986, some two and one-half years after appellant's cause of action expired. Therefore, even retroactive application of the new 18 year statute of limitations would not affect appellant's rights.

II.

Having determined that the new statute of limitations shall not be applied retroactively and that even if it were applied retroactively, it would not remove the time bar on appellant's action, we now address the arguments raised by appellant as to why the six year statute of limitations should not be applied.

The six year statute of limitations provides:

(e) Limitation of actions.—All actions to establish the paternity of a child born out of wedlock brought under this section must be commenced within six years of the birth of the child, except where the reputed father shall have voluntarily contributed to the support of the child or shall have acknowledged in writing his paternity, in which case an action may be commenced at any time within two years of any such contribution or acknowledgement by the reputed father.

42 Pa.C.S. § 6704(e). This act is included within the general provisions regarding support actions, and it applies only to an action to determine paternity brought pursuant to a support action. Therefore, it applies only to children born out of wedlock who must establish paternity prior to seeking support. It does not directly preclude all children from obtaining support after the six year period has run or after a putative father ceases to make voluntary support payments for two years, but only precludes children born out of wedlock from establishing paternity. However, because establishment of paternity is a prerequisite to a support order, the statute of limitations operates to deny children born out of wedlock the right to seek support long before they reach majority unless the child, through his guardian, has already had his paternity established.

Appellant argues that the six year statute of limitations deprives a child born out of wedlock the equal pro-

tection of the laws and therefore is unconstitutional. In *Mills v. Habluetzel*, 456 U.S. 91, 102 S.Ct. 1549, 71 L.Ed 2d 770 (1982), the Supreme Court held that the period during which support suits can be brought on behalf of illegitimate children must be sufficiently long to allow a reasonable opportunity for the claim to be brought and the limitation on such suits must be substantially related to the state's interest in avoiding the initiation of stale claims. In *Mills*, the court found a one year statute of limitations to deny equal protection; in *Pickett v. Brown*, 462 U.S. 1, 103 S.Ct. 2199, 76 L.Ed. 2d 372 (1983), the court similarly found that a two year statute of limitations was unconstitutional. In *Astemborski v. Susmarski*, 502 Pa. 409, 466 A.2d 1018 (1983) the Pennsylvania Supreme Court held that in light of *Mills* and *Pickett*, the Pennsylvania six year statute of limitations on paternity/support actions for children born out of wedlock did not deny equal protection because six years provided ample opportunity for a support action to be brought after birth-related financial and emotional problems had subsided and because the state's interest in avoiding claims of paternity where the proof of paternity had become stale was substantially related to the six year statute of limitations.

Appellant recognizes that the Pennsylvania Supreme Court has held that the statute does not deny equal protection based upon *Mills* and *Pickett*. Appellant also recognizes that the Superior Court cannot overrule a decision of the Pennsylvania Supreme Court. *Commonwealth v. Edrington*, 317 Pa. Super. 545, 464 A.2d 456 (1983). However, appellant suggests that we should "carefully scrutinize the logic" utilized in *Astemborski* to uphold the statute.

Appellant argues that a six year statute of limitations in paternity actions is not substantially related to the state's purported interest in precluding paternity actions in which the proof is stale. If the state had a legitimate

and substantial interest in precluding paternity claims where the proof other than blood tests was non-existent or dimmed by the passage of time, then, appellant argues, the state would consistently place time limitations on all paternity determinations. However, the state has not done this. For example, the Probate, Estates and Fiduciaries Code includes no limitations on the time in which a child must establish paternity in order to inherit from the putative father. 20 Pa.C.S. 2107(c) (3). Thus, the state does not have a legitimate and substantial interest in limiting the time in which paternity actions for support must be brought, and the Pennsylvania statute does not satisfy the second requirement of *Mills*.

Further authority for this position is found in *State ex rel Adult and Family Services v. Bradley*, 295 Or. 216, 666 P.2d 249 (1983). In this case, the Supreme Court of Oregon held unconstitutional on equal protection grounds a six year statute of limitations on paternity actions for out-of-wedlock children. The court stated that the equal protection clause requires at a minimum that states refrain from totally precluding illegitimate children from exercising their rights for reasons of proof problems alone. *Jiminez v. Weinberger*, 417 U.S. 628, 94 S.Ct. 2496, 41 L.Ed.2d 363 (1974); *Mathews v. Lucas*, 427 U.S. 495, 96 S.Ct. 2755, 49 L.Ed.2d 651 (1976); see also *Bradley, Id.*, at 253, n. 12. Therefore, any restraints on the rights of children born out of wedlock to establish paternity must relate specifically to problems of proof in establishing paternity. The court examined the Oregon statutes and found that the proof problem had been addressed by the provisions regarding the use of blood tests (O.R.S. 199.258) and by the requirement of evidence of paternity corroborating the mother's testimony. (O.R.S. 109.145). The court stated that "although proof of paternity in some cases may become difficult with the passage of time, that possibility does not condone the total preclusion of illegitimate chil-

dren beyond a certain age from attempting to ascertain their father's identity," *Bradley, Id.*, at 254. Thus the court held that the six year statute of limitations denied equal protection, especially where a child could bring a paternity action up to ten years after the death of a parent to determine his right to inherit from the deceased putative father.

In *Astemborski*, the Pennsylvania Supreme Court did not consider that proof of paternity problems have been addressed by other Pennsylvania statutes such as 42 Pa. C.S. § 6136 which provides that blood tests can be conclusive as to paternity,² nor that the legislature has already expressed a lack of state interest in proof problems in paternity actions by placing no limitation on when a child must establish paternity in order to inherit by intestate succession. Similarly the court did not address the seeming inconsistency of limiting out of wedlock children's rights to support by allowing them to establish paternity only within six years of the date of birth or within two years of the last voluntary support payment, but to place no limitation on the putative parent's right to establish paternity at any time and thereafter seek enforcement of his parental rights. See: *In re Mengel*, 287 Pa. Super. 186, 429 A.2d 1162 (1981) (unwed putative father has standing to establish paternity through a petition for declaratory judgment.) Despite the logic of these considerations and their acceptance in developing case law, the Pennsylvania Supreme Court has thus far remained steadfast in its holding that the six year statute of limitations is constitutional. As an intermediate appellate court, we are bound by the decisions of the Supreme Court. Therefore,

² Case law holds that blood tests are admissible as some evidence of paternity but are not conclusive. *Olson v. Dietz*, — Pa. Super. —, 500 A.2d 125 (1985); *Connell v. Connell*, 329 Pa. Super. 1, 477 A.2d 872 (1984); *Turek v. Hardy*, 312 Pa. Super. 158, 458 A.2d 562 (1983).

we hold that the six year statute of limitations, 42 Pa. C.S. § 6704(e), does not deny equal protection.

III.

Appellant also argues that the six year statute of limitations denies due process of law. Even though a child has a right to support throughout his minority, a child born out of wedlock can only sue to receive the support to which he is entitled by bringing an action within six years of birth or two years of the putative father's last voluntary support. Moreover, the statute, which limits when the action must be brought, requires that the complaint for support of a minor child be brought by the person having custody of the child. 20 Pa.C.S. § 6704(b). Thus, although it is the child's right to support, the child's custodian has exclusive control to exercise or not to exercise the child's right. By failing to commence an action for the child's support within the statute of limitations, the custodian can forfeit the child's right to ever receive support from the putative father. Therefore, appellant argues, the child is denied due process.

In some jurisdictions which have considered the due process argument against paternity statutes of limitations, the controlling issue has been whether the statute precludes the child's only avenue for enforcement of the parent's obligation for support. In some jurisdictions, the statutory procedure for obtaining support, to which the statute of limitations applies, is not the exclusive means of establishing paternity and support. *Kaur v. Singh Chawla*, 11 Wash. App. 362, 522 P.2d 1198 (1974) (to keep the statute of limitations from being declared unconstitutional, the court held that the statutory filiation procedures were not the exclusive means of securing the child's right to support); *Huss v. DeMott*, 215 Kan. 450, 524 P.2d 743 (1974) (a child has a common law cause of action separate from the statutory bastardy proceedings). And in some jurisdictions, the statute of limita-

tions has been interpreted as applying only to the mother or guardian's right and not to the child's right. *Doak v. Milbaurer*, 216 Neb. 331, 343 N.W.2d 751 (1984); *Huss v. DeMott*, 215 Kan. 450, 524 P.2d 743 (1974).

The only procedure for bringing a paternity and support action in Pennsylvania is pursuant to the support statute. 42 Pa.C.S. § 6701 *et seq.* Yet under this statute, the child's custodian must bring the action and must do so while the child is still a minor. If the person who has custody of the child fails to file a complaint for support/paternity before the child is six years old, the child is foreclosed from seeking and obtaining support throughout the remainder of his minority even though, in theory, he has the right to support until he reaches majority.

It is the settled rule in Pennsylvania, "that it is not violative of any constitutional rights to hold minors bound equally with adults to the prescribed statutory periods within which legal causes of action may be brought." *Petri v. Smith*, 307 Pa. Super. 261, 453 A.2d 342 (1982); *Von Colln v. Pennsylvania Railroad Co.*, 367 Pa. 232, 80 A.2d 83 (1951). In *DeSantis v. Yaw*, 290 Pa. Super. 535, 434 A.2d 1273 (1981) a panel of the Superior Court seriously questioned the continuing validity of the Supreme Court's rule stating: "a chose in action is a form of personal property that without question now belongs to the injured child himself, and yet he is legally debarred from pursuing his claim." *Id.*, at 542, 434 A.2d at 1276. The Supreme Court has not re-addressed the issue of whether children who are held to be equally bound to statutes of limitations with adults are denied due process, and the Superior Court has been compelled to continue to follow the long-established rule. *Stein v. The Washington Hospital*, 302 Pa. Super. 124, 448 A.2d 558 (1982). Until the Supreme Court changes its rule, we are bound to follow it. Therefore, we hold

that the six year statute of limitations, 42 Pa.C.S. § 6704 (e), does not deny due process.

IV.

Appellant's final argument is that appellee should be equitably estopped from raising the statute of limitations as a defense because of his conduct towards her. Appellant avers that when she told appellee that she was pregnant with his child, he physically abused her and threatened her in order to prevent her from listing him as the child's father on the birth certificate. As found by the trial court, however, even if appellee did threaten and abuse appellant, this behavior lasted only a few years after 1972, and there were at least six years in which to have commenced the action after the abuse ceased. Therefore, we find no merit to this argument.

Order affirmed.

IN THE SUPERIOR COURT OF
PENNSYLVANIA

(Title Omitted in Printing)

ORDER OF COURT

AND NOW, this 18th day of December, 1986, Appellant's Application for Reargument is denied.

Per Curiam

THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

May 27, 1987

Evalynn B. Welling, Esquire
Eileen D. Yacknin, Esquire
Neighborhood Legal Services
1312 E. Carson St.
Pittsburgh, Pa. 15203

In Re: Cherlyn Clark v. Gene Jeter
No. 43 W. D. Allocatur Docket 1987

Dear Mses. Welling and Yacknin:

The Court has entered the following Order on your
Petition for Allowance of Appeal in the above matter:

"May 27, 1987
Petition Denied.
Per Curiam"

Very truly yours,

/s/ Irma T. Gardner
Deputy Prothonotary

ITG: cho

cc: Craig McKlean, Esq.
Hon. Leroy S. Zimmerman
Rose Palmer-Phelps, Director
Hon. Eugene Strassburger

SUPREME COURT OF THE UNITED STATES

No. 87-5565

CHERLYN CLARK,
Petitioner

v.

GENE JETER

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPERIOR COURT OF THE STATE OF
PENNSYLVANIA, PITTSBURGH OFFICE

ON CONSIDERATION of the motion for leave to proceed
herein *in forma pauperis* and of the petition for writ
of certiorari, it is ordered by this Court that the motion
to proceed *in forma pauperis* be, and the same is hereby,
granted; and that the petition for writ of certiorari be,
and the same is hereby, granted.

January 11, 1988